



FILED

May 27 2008, 12:01 pm

Kevin L. Smith

CLERK
of the supreme court,
court of appeals and
tax court

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WILLIAM L. ALLSUP,)
)
 Appellant-Defendant,)
)
 vs.) No. 84A01-0710-CR-469
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0608-MR-2599

May 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After William L. Allsup's jury trial resulted in convictions of murder and robbery as a Class C felony, Allsup appeals. On appeal, he argues that the testimony of two witnesses testifying against him was so incredibly dubious that insufficient evidence exists to support his convictions. Concluding that the doctrine of incredible dubiosity is inapplicable in this case because the challenged testimony is corroborated and that the evidence is otherwise sufficient, we affirm.

Facts and Procedural History

On approximately December 22, 1992, Allsup and his friend Lamar D. Perry decided to rob a taxi driver. In preparation, they purchased a sawed-off shotgun. On the evening of December 23, the two men drove in Perry's then-girlfriend's 1988 black Dodge Shadow to a K-Mart store in Terre Haute, Indiana. Allsup called a taxicab company at around 8:30 p.m. and waited for his ride in front of K-Mart. When his taxi arrived, Allsup climbed into the car with the shotgun concealed under his coat. Allsup instructed the driver, Jerry Need, to drop him off at an address in the Gaslight Estates Mobile Home Park, an area that Allsup and Perry had earlier identified as suitable for the planned robbery. Perry followed closely behind the taxi in his girlfriend's car.

Once Allsup and Need reached their destination, Allsup shot Need in the neck, killing him. He left Need on the ground and drove away in the taxi. Perry followed. After driving twenty minutes south of the mobile home park, the two cars pulled over. Allsup and Perry wiped down the interior of the taxi to remove fingerprints and searched

the car for money, which they did not find. They abandoned the taxi, and Perry dropped off Allsup at a gas station.

In 2003, former Vigo County Sheriff William Harris returned to the Vigo County Sheriff's Department as a part-time employee to investigate cold cases. While re-investigating Need's murder, Harris became interested in Allsup and Perry as possible suspects because they fit descriptions provided by witnesses on the night of the crime. Harris also learned that Perry's ex-girlfriend had owned a car in 1992 that matched the description given by witnesses and that Perry had often driven that car.

Detectives then located Perry, who was serving a thirty-four-year sentence in California for drug- and weapon-related offenses and for multiple counts of armed robbery. Perry admitted his involvement in Need's murder to the detectives and provided a detailed account of his plan with Allsup to rob a taxi driver and the events of December 23, 1992.

On August 23, 2006, the State charged Allsup with Count I: murder,¹ Count II: felony murder,² and Count III: robbery resulting in serious bodily injury, a Class A felony.³

Detectives later received additional information implicating Allsup in Need's murder. In early 1993, Jodie Roy Bennett was in the Vigo County Jail awaiting trial on double homicide charges. While out of his cell block one day, Bennett encountered Allsup near the Warden's Office. The two inmates, who did not know each other, began

¹ Ind. Code § 35-42-1-1(1).

² I.C. § 35-42-1-1(2).

³ Ind. Code § 35-42-5-1.

to converse. After exchanging names, Allsup recognized Bennett as someone who had recently been arrested for homicide. Allsup told Bennett that he was “afraid of getting caught up for a murder that he committed in December of the cab driver at Gaslight Estates.” Tr. p. 438. In 2007, Bennett met with detectives to describe his 1993 conversation with Allsup. He then provided the detectives with a recorded statement implicating Allsup in Need’s murder. At that time, Bennett was incarcerated in the Indiana State Prison in Michigan City, Indiana.

Allsup’s jury trial proceedings commenced on August 6, 2007. Both Perry and Bennett testified at trial. On August 10, 2007, the jury found Allsup guilty as charged. The trial court merged Count II into Count I and found that the conviction under Count III should be entered as a Class C felony rather than a Class A felony. Thus, the trial court entered judgment against Allsup for one count of murder and robbery as a Class C felony.⁴ Appellant’s App. p. 19. The court then sentenced him to forty years for murder and four years for robbery, to be served concurrently. *Id.* Allsup now appeals his convictions.⁵

Discussion and Decision

On appeal, Allsup contends that the testimony of Perry and Bennett was incredibly dubious and, therefore, the evidence is insufficient to support his convictions. The

⁴ I.C. § 35-42-5-1.

⁵ In his appellate brief, Allsup challenges his three convictions and references his conviction for Class A felony robbery. Appellant’s Br. p. 11, 20. However, the trial court only entered judgment of conviction on two counts and entered judgment against Allsup for Class C felony robbery rather than Class A felony robbery. Appellant’s App. p. 9, 19.

In its appellate brief, the State contends that Allsup only challenges his conviction for murder. Appellee’s Br. p. 1. However, Allsup’s brief makes clear that he challenges each of his convictions.

We caution counsel to review the record more closely.

“incredible dubiousity rule” provides that a court may “impinge on the jury’s responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.” *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). The application of this rule is limited to where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant’s guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. “[A]pplication of this rule is rare and . . . the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no person could believe it.” *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) (citation omitted).

Allsup misunderstands the incredible dubiousity rule. Allsup contends in his appellate brief that Perry was a “sole witness” and that “[t]here [were] so many contradictions in his testimony as compared to those of the neutral independent witnesses as to make his testimony clearly and inherently contradictory.” Appellant’s Br. p. 15. He points to pieces of Perry’s testimony that contradicted testimony given by other eyewitnesses and emphasizes Perry’s criminal history to support this claim. However, the incredible dubiousity rule applies only when a witness’s testimony is *inherently* improbable. It does not apply when a witness’s testimony contradicts another witness’s testimony. Simply put, Allsup is asking us to reweigh the evidence and assess Perry’s credibility, which we cannot do. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Further, Perry was not the *sole* witness, a requisite for the application of the incredible

dubiosity rule. *Thompson v. State*, 765 N.E.2d 1273, 1275 (Ind. 2002). Testimony from multiple witnesses was presented at trial, and, notably, Bennett's testimony implicating Allsup in the crimes directly corroborated Perry's testimony.

Allsup also contends that Bennett's testimony implicates the incredible dubiosity rule, but writes: "The testimony from Jodie Bennett is so utterly preposterous that it doesn't even deserve comment. And, aside from that, there is absolutely nothing even remotely corroborating." Appellant's Br. p. 19. This is the extent of Allsup's argument pertaining to Bennett's testimony, and, as such, the issue is waived for failure to present a cogent argument. Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, Bennett's testimony was not incredibly dubious, as Bennett was not the sole witness implicating Allsup and his testimony is corroborated by Perry's testimony. *Thompson*, 765 N.E.2d at 1275.

To the extent that Allsup contends that the evidence as a whole is insufficient to sustain his convictions, again, we may not reweigh the evidence or judge the credibility of the witnesses. *McHenry*, 820 N.E.2d at 126. The evidence most favorable to the verdicts reveals that Perry and Allsup conspired to rob a taxi driver, that they selected a location and lured the victim there, and that Allsup shot Need in the neck, killing him. To the extent that witnesses offered conflicting accounts of details, it was within the province of the jury to decide who to believe and which details were important. The evidence is sufficient to sustain Allsup's convictions for murder and robbery as a Class C felony.

Affirmed.

MAY, J., and MATHIAS, J., concur.